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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the matter of:	)	DOCKET NO. SDWA-10-2001-01-183
	)	
Myrmo and Sons, Inc.	)	COMPLAINT FOR CIVIL PENALTIES
	)	AND ADMINISTRATIVE ORDER
	)	
Respondent.	)	
	)	
_____	)	

**I. JURISDICTION**

This Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 1423(c) of the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300h-2(c). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 10, who in turn has redelegated them to the Director, Office of Water. Pursuant to Section 1423(c) of the SDWA, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, 64 Fed. Reg. 40176-40190 (July 23, 1999) ("CROP rules"), Complainant hereby proposes the assessment of civil penalties against Myrmo and Sons, Inc. for the violation of the requirements of an applicable underground

1 injection control program approved pursuant to Section 1422 of  
2 the SDWA, 42 U.S.C. § 300h-1. Pursuant to Section 1423(c) of  
3 the SDWA, 42 U.S.C. § 300h-2, Complainant also proposes issuance  
4 of the administrative order contained in Part VII of this  
5 document. **II. GENERAL ALLEGATIONS**

6 1. Myrmo and Sons, Inc., hereinafter "Respondent," is a  
7 corporation duly organized under the laws of the State of  
8 Oregon.

9 2. Respondent is a "person" within the meaning of Section  
10 1401(12) of the SDWA, 42 U.S.C. § 300f(12).

11 3. Respondent owns and operates a motor vehicle repair  
12 service facility located at 3500 North Highway 97, Bend, Oregon  
13 ("Facility").

14 **III. AUTHORITIES AND ALLEGATIONS**

15 4. On August 23, 2000, EPA conducted an Underground  
16 Injection Control "UIC" inspection of Respondent's Facility.

17 5. At the time of the August 23, 2000, UIC inspection, the  
18 Facility repaired motor vehicles.

19 6. The Facility discharged petroleum waste fluids into  
20 waste disposal wells for surface drainage.

21 7. The Facility did not have an available means to  
22 temporarily plug or block the waste disposal wells for surface  
23 drainage in the event of an accident or spill.

24 8. Pursuant to Section 1422 of the SDWA, 42 U.S.C. § 300h-  
25 1, and 40 C.F.R. Part 147, Subpart MM, Oregon Department of  
26 Environmental Quality ("ODEQ") administers an EPA-approved UIC  
27 program for all classes of wells in Oregon, except those on  
28

1 Indian lands. EPA approved ODEQ's UIC program on September 25,  
2 1984, effective October 9, 1984.

3 9. Pursuant to 40 C.F.R. § 147.1900(a)(2), requirements set  
4 forth in Oregon Administrative Rules ("O.A.R.") § 340-044-0050  
5 have been incorporated by reference and made a part of the  
6 applicable UIC program for Oregon. O.A.R. § 340-044-0050(5)  
7 provides that, "Using a waste disposal well for surface drainage  
8 in areas where toxic chemicals or petroleum waste fluids are  
9 stored or handled is prohibited, unless there is containment  
10 around the product area which will prevent spillage or leakage  
11 from entering the well." O.A.R. § 340-044-0050(6) provides  
12 that, "Any owner or operator of a waste disposal well for storm  
13 drainage shall have available a means of temporarily plugging or  
14 blocking the well in the event of an accident or spill."

15 10. On March 5, 2000, and July 19, 2001, EPA notified the  
16 State of Oregon and Respondent of EPA's determination that  
17 Respondent was in violation of requirements of ODEQ's UIC  
18 program. More than thirty days have elapsed since EPA issued  
19 these notifications, and Oregon has not commenced enforcement  
20 action against Respondent.

21 **Count I**

22 11. At the time of the August 23, 2000, UIC inspection, EPA  
23 observed one waste disposal well for surface drainage being used  
24 for petroleum waste fluid disposal from a steam cleaning  
25 operation, in violation of O.A.R. § 340-044-0050(5). The depth  
26 of the waste disposal well is greater than its largest surface  
27 dimension.

12. Respondent used the waste disposal well for petroleum waste fluid disposal each day for at least five years preceding the issuance of this Complaint.

Count II

13. Complainant realleges and incorporates by reference Paragraphs 1 through 12.

14. The facility did not have any means to temporarily plug or block four waste disposal wells for storm drainage, in violation of O.A.R. § 340-044-0050(6).

## V. PROPOSED PENALTY

15. Pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties not to exceed \$11,000 for each day of violation for any past or current violation, up to a maximum of \$137,500.

16. Based on the foregoing authority and allegations, Complainant hereby proposes issuance of a final order assessing administrative penalties against Respondent, for the SDWA violations cited above, in the amount of ELEVEN THOUSAND DOLLARS (\$11,000).

17. The proposed penalty amount was determined by Complainant after taking into account appropriate factors including: the seriousness of the violations; the economic benefit resulting from the violations; and Respondent's history of violations, ability to pay, and good faith efforts to comply.

18. The violations described above are serious. Respondent's violations have resulted in the injection of

1 significant quantities of petroleum waste fluids above and into  
2 underground sources of drinking water. Petroleum waste fluids,  
3 such as motor oils, contaminated diesel fuels, and chlorinated  
4 and non-chlorinated parts cleaners, contain a number of toxic  
5 chemicals and heavy metals, which can threaten public health.  
6 Such petroleum waste fluids have short-term health effects,  
7 including central nervous system damage and kidney failure  
8 which, if left untreated, may be fatal. Long-term exposure to  
9 petroleum waste fluids can cause kidney, liver, and skin cancer.

10  
11 19. Respondent realized an economic benefit by having  
12 avoided and/or delayed implementation of waste management  
13 controls that would have ensured compliance with the applicable  
14 requirements. Based on the information available to EPA  
15 regarding Respondent's financial condition, Respondent appears  
16 able to pay the proposed penalty.

#### 17 **VII. PROPOSED ADMINISTRATIVE ORDER**

18 20. Based upon the foregoing findings and pursuant to  
19 Section  
20 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), Complainant proposes  
21 to issue the following Administrative Order. Respondent shall  
22 cease all unauthorized underground injection activities. In  
23 particular, Respondent shall comply with the prohibition on  
24 using waste disposal wells found in O.A.R. § 340-044-0050(5).  
25 Within seven (7) days of the effective date of this order,  
26 Respondent shall provide EPA with documentation confirming that  
27 the waste disposal well has been disconnected or rerouted. Such

1 documentation shall include a photographic or video record of  
2 the improvements made to the facility to achieve compliance with  
3 the SDWA, plus an estimate (with any supporting documentation)  
4 of the costs expended to achieve compliance. Respondent shall  
5 submit all such documentation to:

6 Calvin Terada  
7 Groundwater Protection Unit  
8 U.S. Environmental Protection Agency, Region 10  
9 1200 Sixth Avenue, Mail Stop OW-137  
10 Seattle, Washington 98101  
11 Phone: (206) 553-4141

12 Within thirty (30) days of the effective date of this order,  
13 Respondent shall initiate a site investigation or, if necessary,  
14 a cleanup in a manner that is consistent with ODEQ's Independent  
15 Cleanup Pathway, formalized in April 1999. Upon completion of  
16 the site investigation and any necessary cleanup, Respondent  
17 shall submit to EPA for review and approval the final report, in  
18 a form consistent with ODEQ's "Independent Cleanup Pathway  
19 Report Preparation Guide", dated March 26, 2001. Respondent may  
20 request an extension of an additional (30) days in which to  
21 submit to EPA the final report, which extension will not be  
22 unreasonably withheld by EPA. Fifteen (15) days upon receiving  
23 EPA approval for the final report, Respondent shall properly  
24 plug and abandon the waste disposal well in a manner which is  
25 consistent with  
26 O.A.R. § 340-044-0040 and O.A.R. § 690-240-030.

27 21. In accordance with Section 1423(c)(3)(A) of the SDWA,  
28 42 U.S.C. § 300h-2(c)(3)(A), this order will be issued thirty  
(30) days after Respondent receives this written notice unless

1 Respondent requests an administrative hearing on the order as  
2 described below.

3 22. In accordance with Section 1423(c)(3)(D) of the SDWA,  
4 42 U.S.C. § 300h-2(c)(3)(D), this order shall become effective  
5 thirty (30) days following its issuance unless an appeal is  
6 taken pursuant to Section 1423(6) of the SDWA, 42 U.S.C. § 300h-  
7 2(6).

#### 8 **VII. OPPORTUNITY TO REQUEST A HEARING**

9 23. Respondent has the right to request a hearing on any  
10 material fact alleged in this Complaint or on the  
11 appropriateness of the penalty and order proposed herein. Upon  
12 request, the Presiding Officer will hold a hearing for the  
13 assessment of these civil penalties and issuance of this order,  
14 conducted in accordance with Subpart I of the CROP rules. A  
15 copy of the CROP rules accompanies this Complaint.

16 24. Respondent's Answer to this Complaint, including any  
17 request for hearing, must be in writing and must be filed with:

18 Regional Hearing Clerk  
19 U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Mail Stop ORC-158  
20 Seattle, Washington 98101

#### 21 **IX. FAILURE TO FILE AN ANSWER**

22 25. To avoid a Default Order being entered pursuant to  
23 Section 22.17 of the CROP rules, Respondent must file a written  
24 Answer to this Complaint with the Regional Hearing Clerk within  
25 thirty (30) days after service of this Complaint.

26 26. In accordance with Section 22.15 of the CROP rules,  
27 Respondent's Answer should clearly and directly admit, deny, or  
28

1 explain each of the factual allegations contained in this  
2 Complaint with regard to which Respondent have any knowledge.  
3 Respondent's Answer must also state: (1) the circumstances or  
4 arguments which are alleged to constitute the grounds of  
5 defense; (2) the facts which Respondent disputes; (3) the basis  
6 for opposing the proposed penalty and order; and (4) whether a  
7 hearing is requested. Failure to admit, deny, or explain any  
8 material factual allegation contained herein constitutes an  
9 admission of the allegation.

10 **X. NOTICE OF APPLICATION OF SUBPART I**

11 27. The procedures of Subpart I of the CROP rules will  
12 govern this adjudicatory proceeding, 40 C.F.R. §§ 22.50-52.

13  
14 **XII. QUICK RESOLUTION AND SETTLEMENT**

15 28. In accordance with Section 22.18 of the CROP rules,  
16 Respondent may resolve this action at any time after ten (10)  
17 days  
18 following the close of public comment on this Complaint by  
19 mailing the proposed penalty in full to:

20 EPA Region 10 Hearing Clerk  
21 P.O. Box 360903M  
Pittsburgh, Pennsylvania 15251-6903

22 and by filing with the Regional Hearing Clerk a copy of the  
23 check.

24 29. EPA encourages settlement of a proceeding at any time  
25 if the settlement is consistent with the provisions and  
26 objectives of the Act and applicable regulations. Whether or  
27 not Respondent requests a hearing, Respondent may request an



1 informal settlement conference to discuss the facts of this  
2 case, the proposed penalty, and the possibility of settling this  
3 matter. To request such a settlement conference, please  
4 contact:

5 Joseph W. Ryan  
6 Assistant Regional Counsel  
7 U.S. Environmental Protection Agency, Region 10  
8 1200 Sixth Avenue, Mail Stop ORC-158  
9 Seattle, Washington 98101  
10 (206) 553-1506

11 30. A request for an informal settlement conference does  
12 not extend the thirty (30) day period for filing a written  
13 Answer to this Complaint.  
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31. Neither assessment of an administrative civil penalty pursuant to this Complaint, nor compliance with the administrative order proposed herein, shall affect Respondent's continuing obligations to comply with the SDWA, and all other environmental statutes.

Dated this 4 day of September, 2001

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Randall F. Smith, Director  
Office of Water

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**CERTIFICATE OF SERVICE**

I certify that the foregoing "Administrative Complaint For Penalties" was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:

Mary Shillcutt, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Mail Stop ORC-158  
Seattle, Washington 98101

Copy, together with a cover letter and copy of the CROP rules, by certified mail, return receipt requested:

Dated: September 6, 2001

\_\_\_\_\_/S/\_\_\_\_\_  
Greg Sippy  
U.S. EPA Region 10